A **AB AZIZ AL-SAFI ISMAIL & ANOR v. NORAINI ABDULLAH**

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
BADARIAH SAHAMID JCA
MARY LIM JCA
B [CIVIL APPEAL NO: D-02-2039-12-2014]
6 APRIL 2016

***CONTRACT:*** *Agreement – Termination – Tenancy agreement – Claim for unlawful termination – Memorandum of understanding in relation to tenancy*
C *agreement – Failure to comply with matters agreed upon – Refusal to pay rentals and vacate premises – Whether termination notices valid and enforceable – Whether distress proceedings could be contested – Whether contractual right to terminate for breach existed*

D This was the appellants' appeal against the decision of the High Court allowing the respondent's claim for unlawful termination with damages to be assessed before the Deputy Registrar. The appellants entered into a tenancy agreement with the landlord wherein the landlord agreed to let and the appellants accepted tenancy of 12 units of apartments located within a 3-storey building ('tenancy agreement'). Aman Mesra Apartment ('Aman
E Mesra') and Maharani Apartment Hotel & Spa ('Maharani') signed a memorandum of understanding ('MOU') whereby Maharani was appointed by Aman Mesra to provide management and marketing services in relation to the apartments. Aman Mesra was represented by the first appellant while Maharani was represented by the respondent. On 9 July 2008, an agreement
F was signed between the appellants and the respondent, whereby the respondent was appointed as manager for the said apartments and was to provide the facilities and equipment required ('Perjanjian Persefahaman'). On 7 July 2009, both parties signed a 'Deklarasi Bayaran Sewa Bulanan' ('Deklarasi') whereby the respondent undertook to pay all outstanding
G rentals and utility bills, was prohibited from making any additional renovations and to demolish all renovations and restore the affected areas to their original state. As a result of the respondent's failure to attend to the agreed matters, the appellant issued a notice of demand on 18 February 2010 requiring, in essence, the respondent to put right the matters which had been
H agreed to earlier. The respondent failed to comply with the notice. On 26 May 2010, the appellants informed the respondent that the landlord was terminating the tenancy of the said apartment and consequently the respondent was required to vacate and surrender the keys to the said apartments ('26 May 2010 notice'). The respondent did not vacate the said apartments. On 8 February 2011, the respondent alleged that the appellants
I had agreed to affect the change of names in the tenancy agreement and threatened legal action if that was not affected. Through their letter dated 2 March 2011, the appellants denied the allegations and claimed that the

respondent was only appointed as manager under the Perjanjian Persefahaman and that the respondent had agreed under the Deklarasi to make monthly payments to the appellants. Thus, the appellants claimed that as the respondent had not kept her word, her appointment as manager was terminated and the Perjanjian Persefahaman was revoked ('2 March 2011 notice'). On 12 May 2011, the said apartments were repossessed by the landlord and a public auction was conducted under distress proceedings in relation to the items seized. The respondent sued the appellants seeking declaratory orders that the termination notices of 26 May 2010 and 2 March 2011 were invalid and unenforceable. The respondent also sued for loss and damages relating to the distress proceedings. The appellant counterclaimed for their own losses. The High Court, in allowing the respondent's claim and dismissing the appellants' counterclaim, found both notices to be invalid and found that the respondent had suffered loss and damage. Hence, the present appeal.

**Held (allowing appeal with costs)**
**Per Mary Lim JCA delivering the judgment of the court:**

**(1)** The relationship between the parties was to be found in the MOU, Perjanjian Persefahaman and the Deklarasi. All these agreements were freely entered into by the respondent; her signature was affixed to each of these agreements. These agreements must be read together to discern the intention of the parties and the terms as agreed between them. The agreements could not be read in isolation and separate from each other. Once these agreements were properly understood, it became apparent that the terms of the respondent's appointment as manager no longer resides in the Perjanjian Persefahaman alone or even the earlier MOU, but in the Deklarasi as well. On a totality of evidence, both undisputed and admitted, what was patently clear was that the respondent had failed to attend to the matters that were agreed under both agreements, the Perjanjian Persefahaman and the Deklarasi. (paras 33-36)

**(2)** Since the respondent was the manager of the said apartments which were tenanted to the appellants, it was correct and necessary that the appellants notified the respondent of the termination of tenancy and requirement to deliver vacant possession of the said apartments back to the landlord by 1 June 2010. The appellants' letter of 26 May 2010 was precisely for that purpose. Such a letter issued under such circumstances and for such purpose was proper and lawful. As for the notice of termination dated 2 March 2011 which was declared to be invalid and of no effect, this court could not agree with the decision of the High Court. His Lordship had focused on the respondent's performance as manager of the said apartments; that she had carried out her duties well under the Perjanjian Persefahaman and that there was no reason to terminate the respondent's appointment as manager. The reasoning of the High Court Judge was plainly wrong. (paras 27-31)

**(3)** It was the respondent's own failure to keep up to her end of the obligations which ultimately led to the distress proceedings being brought by the landlord. Although the respondent's case was that the appellants were supposed to first arrange for the transfer of the tenancy agreement to the respondent's name; that was not supported by the terms of the Deklarasi or by any of the correspondence exchanged between the parties at the material time. The respondent also could not contest the distress proceedings since the respondent clearly had not paid the rentals. When rentals are not paid, the tenant must vacate the said apartments when the tenancy agreement is terminated. A writ of distress is lawfully and properly issued when a tenant fails to settle rentals and vacate premises. Despite all the warnings given, the respondent refused to pay the rentals. Given that the respondent was really the architect of her own loss, the respondent's claim was unsustainable in law from inception. (paras 37-39)

**(4)** The appellants were within their contractual right to terminate for breach with all those identified defaults on the respondent's part. The notice of termination was consequently valid and proper. All this was overlooked by the High Court Judge who had instead misdirected himself in finding for a recalcitrant respondent. (para 40)

***Bahasa Malaysia*** *Headnotes*

Ini adalah rayuan perayu terhadap keputusan Mahkamah Tinggi membenarkan tuntutan responden untuk penamatan menyalahi undang-undang dengan ganti rugi yang akan dinilai di hadapan Timbalan Pendaftar. Perayu-perayu memeterai satu perjanjian penyewaan dengan tuan tanah di mana tuan tanah bersetuju untuk menyewa kepada perayu-perayu 12 unit pangsapuri yang terletak di dalam sebuah bangunan tiga tingkat ('perjanjian penyewaan'). Pangsapuri Aman Mesra (Áman Mesra') dan Maharani Apartment Hotel & Spa ('Maharani') menandatangani satu memorandum persefahaman ('MOU') di mana Maharani dilantik oleh Aman Mesra untuk memberikan perkhidmatan pengurusan dan pemasaran berhubungan dengan pangsapuri tersebut. Aman Mesra diwakili oleh perayu pertama dan Maharani diwakili oleh responden. Pada 9 Julai 2008, satu persetujuan ditandatangani antara perayu dan responden, di mana responden, sebagai individu, dilantik sebagai pengurus pangsapuri tersebut dan untuk membekalkan kemudahan dan peralatan yang diperlukan ('Perjanjian Persefahaman'). Pada 7 Julai 2009, kedua-dua pihak menandatangani Deklarasi Bayaran Sewa Bulanan ('Deklarasi') di mana responden bersetuju untuk membayar semua sewa tertunggak dan bil-bil utiliti, dilarang daripada membuat apa-apa pengubahsuaian tambahan dan untuk merobohkan segala pengubahsuaian dan memulihkan kawasan yang terlibat kepada keadaan asal mereka. Akibat daripada kegagalan responden mematuhi perkara-perkara yang dipersetujui, perayu mengeluarkan notis tuntutan pada 18 Februari 2010 yang pada asasnya memerlukan responden memperbetulkan perkara-

perkara yang dipersetujui sebelum ini. Responden gagal mematuhi notis tersebut. Pada 26 Mei 2010, perayu-perayu memaklumkan kepada responden bahawa tuan tanah menamatkan penyewaan pangsapuri tersebut dan responden dikehendaki mengosongkan pangsapuri tersebut dan menyerahkan kunci ('Notis 26 Mei 2010'). Perayu tidak mengosongkan pangsapuri tersebut. Pada 8 Februari 2011, responden mendakwa bahawa perayu-perayu bersetuju menukar nama perjanjian penyewaan dan mengugut untuk mengambil tindakan undang-undang jika tidak dibuat demikian. Melalui surat bertarikh 2 Mac 2011, perayu-perayu menafikan tuduhan tersebut dan mendakwa responden hanya dilantik sebagai pengurus di bawah Perjanjian Persefahaman dan responden bersetuju di bawah Deklarasi untuk membuat bayaran bulanan kepada perayu-perayu. Oleh itu, perayu mendakwa responden memungkiri janji, dan pelantikannya sebagai pengurus ditamatkan dan Perjanjian Persefahaman dibatalkan ('Notis 2 Mac 2011'). Pada 12 Mei 2011, pangsapuri tersebut diambil semula oleh tuan tanah dan lelongan awam dijalankan di bawah prosiding distres berhubungan dengan barangan yang dirampas. Responden menyaman perayu-perayu dan menuntut perintah pengisytiharan bahawa notis penamatan 26 Mei 2010 dan 2 Mac 2011 adalah tidak sah dan tidak boleh dikuatkuasakan. Responden juga menyaman untuk kerugian dan kerosakan yang dialaminya berhubungan dengan prosiding distres. Mahkamah Tinggi, dalam membenarkan tuntutan responden dan menolak tuntutan balas perayu-perayu, mendapati kedua-dua notis tersebut tidak sah dan memutuskan responden telah mengalami kerugian dan kerosakan. Oleh itu, rayuan ini.

**Diputuskan (membenarkan rayuan dengan kos)**
**Oleh Mary Lim HMR menyampaikan penghakiman mahkamah:**

**(1)** Hubungan antara pihak-pihak terlibat boleh didapati dalam MOU, Perjanjian Persefahaman dan Deklarasi. Kesemua perjanjian ini dimasuki oleh responden; tandatangannya dimeterai kepada setiap perjanjian ini. Perjanjian-perjanjian ini harus dibaca bersama bagi membezakan niat setiap pihak dan syarat-syarat yang dipersetujui antara mereka. Perjanjian-perjanjian ini tidak boleh dibaca secara terpencil dan berasingan daripada satu sama lain. Sebaik sahaja perjanjian-perjanjian ini difahami dengan betul, jelas bahawa terma pelantikan responden sebagai pengurus tidak hanya terdapat dalam Perjanjian Persefahaman atau MOU, tetapi dalam Deklarasi juga. Pada keseluruhan keterangan, yang tidak dipertikaikan dan diakui, apa yang terang dan jelas adalah bahawa responden gagal menangani perkara-perkara yang dipersetujui dalam kedua-dua perjanjian, Perjanjian Persefahaman dan Deklarasi.

**(2)** Oleh kerana responden adalah pengurus pangsapuri yang disewakan kepada perayu-perayu, adalah betul dan perlu untuk perayu-perayu memaklumkan kepada responden berkenaan penamatan penyewaan dan syarat penyerahan milikan kosong pangsapuri tersebut kepada tuan tanah sebelum 1 Jun 2010. Surat perayu bertarikh 26 Mei 2010 adalah untuk

tujuan tersebut. Surat yang dikeluarkan dalam keadaan itu dan untuk tujuan sedemikian adalah teratur dan mengikut undang-undang. Bagi notis penamatan bertarikh 2 Mac 2011 yang diisytiharkan tidak sah dan tidak mempunyai kesan, mahkamah ini tidak boleh bersetuju dengan keputusan Mahkamah Tinggi. Yang Arif Hakim telah memberi tumpuan kepada prestasi responden sebagai pengurus pangsapuri tersebut; bahawa dia menjalankan tanggungjawabnya dengan betul di bawah Perjanjian Persefahaman dan tiada alasan untuk menamatkan pelantikan responden sebagai pengurus. Alasan yang diberikan oleh Hakim Mahkamah Tinggi adalah jelas salah.

**(3)** Kegagalan responden untuk menepati kewajipan-kewajipannya membawa kepada prosiding distres oleh tuan tanah. Walaupun kes responden adalah bahawa perayu sepatutnya mengaturkan pemindahan perjanjian penyewaan kepada nama responden; ini tidak disokong oleh syarat-syarat deklarasi atau oleh mana-mana surat-menyurat antara pihak-pihak pada waktu material tersebut. Responden juga tidak boleh membantah prosiding distres kerana responden dengan jelasnya tidak membayar sewa. Apabila sewa tidak dibayar, penyewa mestilah mengosongkan pangsapuri apabila perjanjian penyewaan ditamatkan. Writ distres dikeluarkan dengan teratur dan mengikut undang-undang apabila penyewa gagal membayar sewa dan mengosongkan premis. Walaupun amaran telah diberi, responden enggan membayar sewa. Memandangkan responden sendiri yang menyebabkan kerugiannya, tuntutan responden tidak boleh dipertahankan dari permulaannya.

**(4)** Perayu-perayu mempunyai hak dari segi kontrak mereka untuk menamatkan perjanjian disebabkan pelanggaran keingkaran yang dikenal pasti pada pihak responden. Notis penamatan adalah sahih dan teratur. Hakim Mahkamah Tinggi terlepas pandang dan dengan itu tersalah arah apabila memihak kepada responden yang keras kepala.

*For the 1st appellant - Shukri Mohamad & Melissa Shukri; M/s Wan Haron Sukri & Nordin*

*For the 2nd appellant - Malik Imtiaz Sarwar & Pavendeep Singh; M/s Shukor Baljit & Partners*

*For the respondent - Mohd Syukran Mohd Noordin & Mohd Firdaus Che Soh; M/s Syukran Noordin*

*[Editor's note: Appeal from High Court, Kota Bahru; Civil Suit No: 22-74-2011 (overruled)].*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Mary Lim JCA:**

**[1]** This is an appeal against the decision of the learned High Court Judge who had allowed the claim of the respondent for unlawful termination with damages to be assessed before the learned Deputy Registrar. Upon due consideration of the written and oral submissions of all learned counsel and the record of appeal, we unanimously allowed the appeal with costs giving our reasons in brief. These are our full grounds.

**Background Facts**

**[2]** On 5 March 2008, the appellants entered into a tenancy agreement with DYMM Tengku Anis binti Tengku Abdul Hamid (landlord) wherein the landlord agreed to let and the appellants accepted tenancy of 12 units of apartments located within a three-storey building erected on Lots 627 & 628, Mukim Kenali, Daerah Kubang Kerian, Seksyen 54, Jajahan Kota Bahru, Kelantan held under title No. HS(D) 458 and HS(D) 450 ("the said apartments"). The tenancy was for a term of ten years commencing from 1 February 2008 and ending on 31 January 2018. The rental was agreed at RM7,200 per month. This agreement shall be referred to as the "tenancy agreement".

**[3]** Aman Mesra Apartment is a company which provides accommodation facilities to students and individuals on a long term basis. Maharani Apartment Hotel & Spa, on the other hand, is a management and marketing company which provides accommodation and hotel services through memberships and groups. On 2 July 2008, these two companies signed a Memorandum of Understanding ("MOU"). Aman Mesra Apartment was represented by the first appellant while Maharani Apartment Hotel & Spa was represented by the respondent. Under the MOU, Maharani Apartment Hotel & Spa was appointed by Aman Mesra Apartment to provide management and marketing services in relation to the said apartments.

**[4]** The salient terms of the MOU are as follow:

(i) the appellants will provide the facilities and equipment according to appropriate specifications for long-term accommodation facilities for guests;

(ii) the respondent was appointed as manager in respect of the overall management and marketing for the said apartments;

(iii) the appellants agreed to fully delegate the management of the operation of the said apartments to the respondent;

(iv) the respondent agreed to manage and market the said apartments with a commitment of 50% accommodation rate at all times;

(v) the respondent agreed to bear the managements costs;

(vi) both parties are entitled to terminate the MOU by giving to the other at least three months written notice.

**[5]** A few days later, on 9 July 2008, another agreement known as "Perjanjian Persefahaman" was signed, this time between the appellants and the respondent. Under this agreement, the respondent, the individual, was appointed as manager for the said apartments and that she is to provide the facilities and equipment required. The appellants agreed to assist the respondent on the provision of facilities and equipment. This agreement was for a ten-year period, as long as the tenancy agreement. It was also agreed that the respondent would receive 40% of the total profits after deducting tax as remuneration for such services rendered. A copy of the tenancy agreement was attached to this "Perjanjian Persefahaman".

**[6]** On 16 August 2009, the first appellant visited the said apartments. He discovered that extensive works and renovations had been carried out to the said apartments without either his prior consent or the approval of the local authority. The respondent was asked to desist. When the respondent failed to do so, the first appellant lodged a police report on 20 August 2009. In that police report, the first appellant also claimed that the respondent was in arrears of rental.

**[7]** On 7 September 2009, both parties signed what is called a "Deklarasi Bayaran Sewa Bulanan" ("Deklarasi"). Under this "Deklarasi", the respondent undertook to pay all outstanding rentals and utility bills (electricity, water and telephone) and to have no outstanding bills. The "Deklarasi" also prohibited the respondent from making any additional renovations to the said apartments and that the respondent was to demolish all renovations and restore the affected areas to their "original state".

**[8]** The appellants claimed that the respondent failed to attend to the agreed matters. As a result, the appellants' solicitors issued a notice of demand on 18 February 2010 requiring in essence, the respondent to put right the matters which had been agreed to earlier failing which the appellants would commence legal action.

**[9]** The respondent did not comply with the notice. So, the appellants lodged another police report on 26 April 2010.

**[10]** The parties met up to negotiate a settlement. Following discussion, the appellants instructed their solicitors to issue a letter dated 18 May 2010, captioned "Cadangan Penyelesaian". Alluding to their earlier discussion, the appellants retracted their legal notice of demand and advised that they will not proceed with court action on the following terms:

(i) the respondent settles all arrears of rental, air conditioning instalments, electricity and water bills;

(ii) the respondent agrees to vacate the said premises and to give vacant possession to the appellants;

(iii) the appellants agree to pay part of the renovation costs for the said apartments based on value ascertained by their valuer;

(iv) the respondent, at its own costs, to immediately demolish and restore to original state those renovations that the appellants have not agreed to;

(v) the appellants will not pay for the purchase of furniture while the respondent is to leave all original furniture belonging to the appellants in good order/state;

(vi) the respondent is to settle the personal debt of RM1,000 to the appellants.

**[11]** On 26 May 2010, the appellants' solicitors informed the respondent that the landlord was terminating the tenancy of the said apartments effective 1 June 2010. The appellants had been issued a notice to vacate the said apartments failing which the landlord would initiate distress proceedings. Consequently, the respondent was required to vacate and surrender the keys to the said apartments before 1 June 2010 failing which the respondent would have to bear any loss suffered.

**[12]** The respondent did not vacate the said apartments.

**[13]** On 13 June 2010, the parties met again to attempt another settlement. This was followed by a letter of even date. The letter listed substantially the same terms of settlement as found in the earlier letter except that the outstanding arrears were now understandingly, more. The respondent was also to pay a sum of RM25,000 for the purchase of furniture. On their part, the appellants were required to change the hire-purchase agreements of the air conditioners with Courts Mammoth and the tenancy agreement to the respondent's name. The appellants would then withdraw their termination notice and refrain from proceeding with any litigation in court. The respondent was required to respond to this letter so that a written settlement agreement could be drawn up.

**[14]** By an undated letter found at p. 437 of the record of appeal but which was received by the appellants on 19 July 2010, the respondent indicated that she was prepared to pay the arrears of rentals subject to the appellants' action on item 8 of the appellants' letter dated 13 June 2010. Item 8 pertains to the change of tenancy to the respondent's name. It would appear that as far as the respondent was concerned, she was not obliged to make any of the payments mentioned in the appellants' letter of 13 June 2010 unless and until the appellants sorted out the change of names for the tenancy agreement. The appellants on the other hand, were only prepared to attend to that change after the respondent had settled all arrears and payments.

**[15]** On 9 January 2011, the landlord informed the appellants that the rentals were in arrears to the sum of RM50,400 and that legal action would be taken if the arrears were not settled. These arrears were for rentals due from July to December 2010.

**[16]** By her solicitors' letter dated 8 February 2011, the respondent alleged that the appellants had agreed to affect the change of names in the tenancy agreement and threatened legal action if that was not affected within 14 days. Through their solicitors' letter dated 2 March 2011, the appellants denied the allegations. The appellants claimed that the respondent was only appointed as manager under the "Perjanjian Persefahaman". The appellants also claimed that the respondent had agreed under the "Deklarasi" to make monthly payments to the appellants, pay all utility bills on time, not to make any alterations or extensions to the building or to any of the rooms of the said apartments, and that any alteration or extension done will be removed and the said apartments restored to original state. Because the respondent had not kept her word, her appointment as manager was terminated and the Perjanjian Persefahaman was revoked. The respondent was consequently required to vacate and return all keys to the said apartments. The appellants also demanded settlement of all arrears amounting to RM109,971.40.

**[17]** The respondent did not pay, neither did she vacate the said apartments.

**[18]** On 12 May 2011, the said apartments were repossessed by the landlord and a public auction was conducted under the distress proceedings in relation to items seized. The respondent sued the appellants seeking declaratory orders that the termination notices of 26 May 2010 and 2 March 2011 were invalid and unenforceable. She also sued for loss and damage relating to the distress proceedings and for loss of reputation. The claim was denied and the appellants counterclaimed for their own losses.

**Decision Of The High Court**

**[19]** After a full trial, the High Court allowed the respondent's claim with damages to be assessed by the Deputy Registrar (although the respondent's claim for economic loss and punitive damages were dismissed) while the appellants' counterclaim was dismissed.

**[20]** According to the learned High Court Judge, the respondent was carrying on her business at the said apartments as usual until the appellants ordered her to leave and vacate the said apartments *vide* letters dated 18 February 2010 and 26 May 2010. After the respondent had protested through her letter dated 30 May 2010, the appellants had agreed that the respondent would replace the appellants as tenant after the respondent had settled all outstanding bills. Despite that agreement, the respondent continued to receive notices from the appellants on 5 January 2011 and 24 January 2011, followed by the notice of termination dated 2 March 2011 instructing the respondent to vacate the said apartments within 14 days. The said apartments were repossessed on 12 May 2011.

**[21]** The High Court found both notices to be invalid. The first notice dated 26 May 2011 which was a notice to vacate the said apartments was invalid because the respondent was not in breach of the "Perjanjian Persefahaman"

dated 9 July 2009. In His Lordship's view, there was no reason to terminate the agreement as the respondent was managing the said apartments well under the terms of the "Perjanjian Persefahaman". The appellants' allegation that the respondent had failed to settle the rentals and other utility bills was unreasonable as there was no clear provision in the "Perjanjian Persefahaman" imposing such an obligation on the respondent. The High Court found that on the contrary, the appellants were obliged to assist the respondent and as the original tenants of the said apartments, the appellants could not shift the burden of settling rentals etc to the respondent.

**[22]** The second notice of 2 March 2011 which was a termination of the respondent's appointment as manager and to vacate the said apartments, was also invalid and unenforceable. The court found the letter of 13 June 2010 imposing on the respondent the obligation to make various payments was in conflict with the "Perjanjian Persefahaman". Consequently, the respondent was not obliged to comply with the terms set out in the letter of 13 June 2010. In any case, the respondent had paid RM28,000 for the arrears of rental to the landlord so that she could replace the appellants as tenants. Despite that payment, the appellants failed to effect the replacement.

**[23]** The learned High Court Judge found that the respondent had suffered loss and damage when the said apartments were seized. The respondent could not carry on with her business because her business equipment (harta perniagaan) had been auctioned off. The court ordered general damages and damages for loss of business equipment to be assessed by the Deputy Registrar.

**This Appeal**

**[24]** As can be seen from the background facts, the arrangements between the parties started earlier than the Perjanjian Persefahaman. It started under the MOU. However, the MOU was made between the two corporate entities of Maharani Apartment Hotel & Spa and Aman Mesra Apartment. The respondent and the first appellant respectively signed on behalf of those entities in that MOU. These two agreements must be considered together with the tenancy agreement, and the Deklarasi as it sets the correct perspective and context of their relationship.

**[25]** The respondent is well aware of the tenancy agreement; that it is an agreement between the appellants and the landlord for a ten year tenancy of the said apartments. The respondent was appointed by the appellants, first of all through their respective companies, but later directly and personally by the appellants, but always as managers, to provide management and marketing services of the said apartments which the appellants wanted rented out on long term leases. The respondent's remuneration for this appointment was based on a percentage of the total profits collected from renting out the said apartments.

**[26]** When the said apartments were found to have been renovated without prior consent of the appellants but more important, without the approval of the local authorities, which fact was admitted by the respondent *albeit* argued to be "minor and non-structural", the parties then signed a Deklarasi. In this Deklarasi, the respondent agreed to pay all outstanding rentals and utility bills. The respondent further agreed that there would be "no outstanding bills". This can only mean that the respondent will pay all bills on time. At the same time, the respondent agreed to demolish all the renovations that had been unlawfully carried out and restore the affected areas to their "original state". The respondent further agreed that she will not carry out any additional renovations to the said apartments. There is no suggestion that this Deklarasi is void for any vitiating reason.

**[27]** In view of the above, it becomes obvious that the learned High Court Judge's decision on the appellants' letter dated 26 May 2010 is erroneous. Since the respondent is the manager of the said apartments which were tenanted to the appellants, not only was it right but it was necessary that the appellants notify the respondent of the termination of tenancy and requirement to deliver vacant possession of the said apartments back to the landlord by 1 June 2010. The validity of the landlord's notice to vacate has never been challenged. In fact, it is not in issue.

**[28]** The appellants' letter of 26 May 2010 was precisely for that purpose. The landlord had warned that if vacant possession was not handed over by 1 June 2010, legal action would be taken. The appellants passed that notification on to the respondent and rightly warned that if she failed to vacate by 1 June 2010, the respondent would have to bear any loss suffered. Such a letter issued under such circumstances and for such purpose is proper and lawful.

**[29]** This material aspect of the notice or letter of 26 May 2010 appears to have been overlooked by the learned High Court Judge although His Lordship did observe at para. 17 of his judgment that "oleh kerana tuan tanah telah menamatkan perjanjian sewa dengan defendan-defendan, maka secara automatiknya perjanjian persefahaman antara defendan-defendan dan plaintif juga berakhir". Instead, His Lordship focused on the respondent's performance as manager of the said apartments: that she had carried out her duties well under the Perjanjian Persefahaman; consequently, there was no reason to terminate the respondent's appointment as manager.

**[30]** With respect, the reasoning of the learned High Court Judge in this respect is plainly wrong. Since the object of the letter of 26 May 2010 was to convey the landlord's notice of termination of tenancy and notice to vacate, we find that the letter of 26 May 2010 cannot be invalid or even improper. The declaratory order granted in relation to this letter is plainly erroneous and misplaced.

**[31]** As for the notice of termination dated 2 March 2011 which was declared to be invalid and of no effect, we also cannot agree with the decision of the High Court.

**[32]** The learned High Court Judge had found that the appellants' letter of 13 June 2010 imposing on the respondent the obligation to make various payments was in conflict with the "Perjanjian Persefahaman". Consequently, the respondent was not obliged to comply with the terms set out in the letter of 13 June 2010. The learned High Court Judge further found that the respondent had in any event paid RM28,000 for the arrears of rental to the landlord. Despite that payment, she had not replaced the appellants as tenants.

**[33]** With respect to the learned High Court Judge, while the terms in this letter may appear to be in conflict with the Perjanjian Persefahaman, the court has clearly overlooked the other agreement which is to be found in the Deklarasi of 7 September 2009. As was pointed out earlier, the relationship between the parties is to be found in the MOU, Perjanjian Persefahaman and later, the Deklarasi. All these agreements were freely entered into by the respondent; her signature is affixed to each of these agreements. These agreements must also be read together to discern the intention of the parties and the terms as agreed between them.

**[34]** Under the Perjanjian Persefahaman, the respondent was primarily appointed as manager of the said apartments. The respondent also agreed to pay the appellants 60% of the total profits under this arrangement. The respondent did not abide by the terms of this agreement. Instead, amongst others, the respondent wrongfully renovated the said apartments.

**[35]** In resolution of the state of affairs that the parties found themselves in at that time, the parties signed the "Deklarasi" under which the respondent remained as the manager of the said apartments. But this time, the respondent also agreed to pay all outstanding rentals and utility bills, demolish all renovations and restore the affected areas to their "original state"; and not to carry out any additional renovations to the said apartments. Both the Perjanjian Persefahaman and the Deklarasi are agreements which were freely entered into by the respondent; her signature is affixed to each of these agreements. Both agreements must be read together to discern the intention of the parties and the terms as agreed between them. The agreements cannot be read in isolation and separate from each other.

**[36]** Once these agreements are properly understood, it becomes apparent that the terms of the respondent's appointment as manager no longer resides in the Perjanjian Persefahaman alone or even the earlier MOU, but in the Deklarasi as well. And, on a totality of evidence, both undisputed and admitted, what is patently clear is that the respondent failed to attend to the matters that were agreed under both agreements, the Perjanjian Persefahaman and the Deklarasi.

**[37]** It was the respondent's own failure to keep up to her end of the obligations which ultimately led to the distress proceedings being brought by the landlord. Although the respondent's case was that the appellants were supposed to first arrange for the transfer of the tenancy agreement to the respondent's name; that is not supported by the terms of the Deklarasi or by any of the correspondence exchanged between the parties at the material time.

**[38]** The appellants' letter of 13 June 2010 served as a reminder of the respondent's obligations as found in that Deklarasi, which obligations the respondent had not kept. Since the respondent did not comply with the appellants' letter of 13 June 2010, the arrears remained and built up again as was the case of the rentals which were unpaid for the months of July to December 2010. Consequently, the landlord issued the notice of 9 January 2011 which led to the distress proceedings and later, the auction.

**[39]** The respondent also did not contest the distress proceedings which in fact she could not possibly do so to start with since the respondent clearly had not paid the rentals. When rentals are not paid, the tenant, including one such as the respondent who had agreed to pay the rentals, must vacate the said apartments when the tenancy agreement is terminated. A writ of distress is lawfully and properly issued when a tenant fails to settle rentals and vacate premises. There is evidence aplenty of the appellants duly informing the respondent of the same in this case. Despite all these warnings, the respondent did not pay the rentals. The respondent certainly did not pay the rentals which eventually led to the distress proceedings by the landlord. Given that the respondent is really the architect of her own loss, the respondent's claim was unsustainable in law from inception.

**[40]** With respect, all this was overlooked by the learned High Court Judge who instead had misdirected himself in finding for a recalcitrant respondent/plaintiff. The appellants were within their contractual right to terminate for breach with all those identified defaults on the respondent's part. The notice of termination is consequently valid and proper.

**[41]** In the circumstances, we find merit in the appellants' submissions. Consequently, we allow the appeal with costs of RM30,000 here and below. Deposit to be refunded to the appellants.